

UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF CALIFORNIA

EUGENE E. ANDREYEV,

Plaintiff,

v.

AMY VAN, et al.,

Defendants.

No. 2:23-cv-01403-DJC-CKD PS

FINDINGS AND RECOMMENDATIONS

Plaintiff, Eugene E. Andreyev, proceeds without counsel and seeks relief for an alleged violation of his federal civil rights based on the seizure of his vehicle.<sup>1</sup> Plaintiff's second amended complaint is before the court for screening. (ECF No. 6.) The second amended complaint states a claim under the Fourth Amendment. By separate order, the undersigned will order that the second amended complaint be served on defendants Turcotte, Klockenbrink, and Jackson. By these findings and recommendations, the undersigned recommends plaintiff's claims alleging violations of the Fourteenth Amendment and any claims against defendant Van be dismissed without further leave to amend, and that this case proceed solely on the alleged Fourth Amendment violation by defendants Turcotte, Klockenbrink, and Jackson.

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<sup>1</sup> This matter is before the undersigned pursuant to Local Rule 302(c)(21). See 28 U.S.C. § 636(b)(1).

1       **I. Screening Requirement**

2           Pursuant to 28 U.S.C. § 1915(e), the court must screen every in forma pauperis  
3 proceeding, and must order dismissal of the case if it is “frivolous or malicious,” “fails to state a  
4 claim on which relief may be granted,” or “seeks monetary relief against a defendant who is  
5 immune from such relief.” 28 U.S.C. § 1915(e)(2)(B); Lopez v. Smith, 203 F.3d 1122, 1126-27  
6 (2000). A claim is legally frivolous when it lacks an arguable basis either in law or in fact.  
7 Neitzke v. Williams, 490 U.S. 319, 325 (1989). In reviewing a complaint under this standard, the  
8 court accepts as true the factual allegations contained in the complaint, unless they are clearly  
9 baseless or fanciful, and construes those allegations in the light most favorable to the plaintiff.  
10 See Neitzke, 490 U.S. at 327; Von Saher v. Norton Simon Museum of Art at Pasadena, 592 F.3d  
11 954, 960 (9th Cir. 2010), cert. denied, 564 U.S. 1037 (2011).

12           Pro se pleadings are held to a less stringent standard than those drafted by lawyers. Haines  
13 v. Kerner, 404 U.S. 519, 520 (1972). However, the court need not accept as true conclusory  
14 allegations, unreasonable inferences, or unwarranted deductions of fact. Western Mining Council  
15 v. Watt, 643 F.2d 618, 624 (9th Cir. 1981). A formulaic recitation of the elements of a cause of  
16 action does not suffice to state a claim. Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555-57  
17 (2007); Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009).

18           To state a claim on which relief may be granted, the plaintiff must allege enough facts “to  
19 state a claim to relief that is plausible on its face.” Twombly, 550 U.S. at 570. “A claim has facial  
20 plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable  
21 inference that the defendant is liable for the misconduct alleged.” Iqbal, 556 U.S. at 678. A pro se  
22 litigant is entitled to notice of the deficiencies in the complaint and an opportunity to amend  
23 unless the complaint’s deficiencies could not be cured by amendment. See Noll v. Carlson, 809  
24 F.2d 1446, 1448 (9th Cir. 1987), superseded on other grounds by statute as stated in Lopez, 203  
25 F.3d 1122.

26       **II. Plaintiff’s Allegations**

27           On August 3, 2022, plaintiff parked his car on the side of the road where many other cars  
28 were parked. (ECF No. 6 at 4, 6-7.) On the same day, Citrus Heights Police Department Officer

1 Klockenbrink, Officer Jackson, and Chief Turcotte seized plaintiff's vehicle without a warrant.

2 (Id. at 6.) Plaintiff was not involved in any traffic violations that day. (Id.)

3 Plaintiff is Russian. (ECF No. 6 at 6-7.) An unidentified officer used a fake Russian  
4 accent when talking to plaintiff, but plaintiff later heard the officer speaking perfect English  
5 without the fake accent. (Id.) Plaintiff does not currently know that officer's name.

6 **III. Discussion**

7 To state a claim under the Civil Rights Act, 42 U.S.C. § 1983, a plaintiff must allege two  
8 essential elements: (1) that a right secured by the Constitution or laws of the United States was  
9 violated, and (2) that the alleged violation was committed by a person acting under the color of  
10 state law. West v. Atkins, 487 U.S. 42, 48 (1988). Plaintiff adequately alleges the defendant  
11 police officers and chief acted under color of state law in seizing his vehicle. The court considers  
12 whether plaintiff has adequately alleged a violation of his federal rights.

13 **A. Fourth Amendment**

14 The Fourth Amendment protects the "right of people to be secure in their persons, houses,  
15 papers, and effects, against unreasonable searches and seizures." U.S. CONST. amend. IV. A  
16 seizure of property occurs when there is some meaningful interference with an individual's  
17 possessory interests in that property. Soldal v. Cook County, Ill., 506 U.S. 56, 61 (1992). "The  
18 impoundment of an automobile is a seizure within the meaning of the Fourth Amendment."  
19 Miranda v. City of Cornelius, 429 F.3d 858, 862 (9th Cir. 2005).

20 "A seizure conducted without a warrant is per se unreasonable under the Fourth  
21 Amendment—subject only to a few specifically established and well delineated exceptions. The  
22 burden is on the Government to persuade the district court that a seizure comes under one of a  
23 few specifically established exceptions to the warrant requirement." United States v. Hawkins,  
24 249 F.3d 867, 872 (9th Cir. 2001) (internal quotation marks and citations omitted).

25 Police officers are permitted to impound vehicles pursuant to the community caretaker  
26 exception to the warrant requirement. South Dakota v. Opperman, 428 U.S. 364, 368 (1976);  
27 Hallstrom v. Garden City, 991 F.2d 1473, 1477 n.4 (9th Cir. 1993) (upholding the towing of a car  
28 from a public parking lot following the driver's arrest pursuant to the community caretaking

1 exception). Whether a vehicle may be impounded under the community caretaking doctrine  
2 “depends on the location of the vehicle and the police officer’s duty to prevent it from creating a  
3 hazard to other drivers or from being a target for vandalism or theft.” United States v. Caseres,  
4 533 F.3d 1064, 1075 (9th Cir. 2008). The government bears the burden of showing that a  
5 warrantless impoundment of a vehicle is justified by the community caretaking exception to the  
6 Fourth Amendment’s warrant requirement. United States v. Cervantes, 703 F.3d 1135, 1141 (9th  
7 Cir. 2012); Miranda, 429 F.3d at 862; Smith, 522 F.3d at 315 (“we judge the constitutionality of a  
8 community caretaking impoundment by directly applying the Fourth Amendment which protects  
9 people ‘against unreasonable searches and seizures.’ U.S. Const. Amend. IV.”).

10 Liberally construing the complaint and its allegations, the court infers plaintiff is alleging  
11 that defendants Klockenbrink, Jackson, and Turcotte seized his vehicle under the community  
12 caretaking exception to the Fourth Amendment’s warrant requirement under circumstances not  
13 necessary to prevent it from creating a hazard to other drivers or from being a target for  
14 vandalism or theft.<sup>2</sup> Based on the facts alleged in the complaint, the court cannot determine the  
15 reasonableness of this seizure allegedly made under the community caretaking doctrine. In the  
16 absence of allegations that justify the application of the exception, it is the defendants’ burden to  
17 prove the community caretaking exception applies. See, e.g., Gonzalez-Tzita v. City of Los  
18 Angeles, No. CV 16-194-GHK (EX), 2016 WL 11518619, at \*4 (C.D. Cal. May 3, 2016)  
19 (collecting cases and noting courts in the Ninth Circuit have suggested the government must  
20 provide testimony or other extrinsic evidence to prove the community caretaking exception  
21 applies in the absence of allegations that justify the application of the exception).

22 Because the second amended complaint states a claim against the defendants under 42  
23 U.S.C. § 1983 based on an alleged violation of plaintiff’s rights under the Fourth Amendment, the  
24 court will order service of the complaint on the defendants Klockenbrink, Jackson, and Turcotte  
25 by separate order. As set forth below, however, no other claims of violations of plaintiff’s civil  
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27 <sup>2</sup> A reasonable inference is that plaintiff was arrested near the site of his parked car. In the  
28 original complaint, plaintiff alleged he was held in jail for a month and that when he was released,  
the car had been sold. (See ECF No. 1 at 6.)

1 rights are cognizable.

2       **B. Fourteenth Amendment**

3           As set forth in the court's prior order screening the original complaint, plaintiff does not  
4 have a cognizable due process claim under the Fourteenth Amendment. (ECF No. 3 at 4-5.)  
5 California provides a meaningful post-deprivation remedy for the loss of property by deprivations  
6 of public officials. Barnett v. Centoni, 31 F.3d 813, 816-17 (9th Cir. 1994); see Cal. Gov't Code §  
7 810 et seq. ("Government Claims Act"). Even unauthorized and intentional deprivations of  
8 property do not constitute a violation of procedural requirements of the Due Process Clause if a  
9 meaningful post-deprivation remedy for the loss is available. Hudson v. Palmer, 468 U.S. 517,  
10 533 (1984). Therefore, the amended complaint fails to state a claim for a due process violation.

11           Plaintiff also alleges he was discriminated against on the basis of being Russian. However,  
12 the allegations fail to state an equal protection claim.

13           To state a claim for a violation of the Equal Protection Clause under 42 U.S.C. § 1983, a  
14 plaintiff must generally show the defendants acted with an intent or purpose to discriminate  
15 against the plaintiff based upon membership in a protected class. See Thornton v. City of St.  
16 Helens, 425 F.3d 1158, 1166 (9th Cir. 2005). A plaintiff must allege facts demonstrating  
17 "intentional unlawful discrimination or... facts that are at least susceptible of an inference of  
18 discriminatory intent." Monteiro v. Tempe Union High Sch. Dist., 158 F.3d 1022, 1026 (9th Cir.  
19 1998).

20           Here, an unspecified officer allegedly used a fake Russian accent when speaking with  
21 plaintiff. Plaintiff also alleges many other cars were parked on the same street and not seized.  
22 However, the amended complaint does not plead any facts suggesting the owners of the other cars  
23 were "similarly situated" to plaintiff such that the difference in treatment could be susceptible of  
24 an inference of discriminatory intent. See Cleburne v. Cleburne Living Ctr., Inc., 473 U.S. 432,  
25 440 (1985). "[N]aked assertions," "labels and conclusions" or "a formulaic recitation of the  
26 elements of a cause of action" do not suffice to state a claim. Twombly, 550 U.S. at 555-57  
27 (2007); see also Iqbal, 556 U.S. at 678; Todd v. Briesenick, No. 13-CV-0753-KJM-KJN, 2013  
28 WL 2151658, at \*5 (E.D. Cal. May 16, 2013) (granting motion to dismiss where "plaintiff [did]

1 not provide specific facts, beyond mere speculation, supporting his claims that defendants treated  
2 him differently from similarly situated persons"). Plaintiff does not identify any similarly situated  
3 individuals or instances where a similarly situated individual was treated differently. Without  
4 facts showing that other individuals who were in all relevant respects like plaintiff were treated  
5 more favorably without a rational basis, the amended complaint does not state a claim for relief  
6 on equal protection grounds.

7 **IV. Conclusion and Recommendation**

8 The second amended complaint states a claim for a violation of plaintiff's Fourth  
9 Amendment rights based on the seizure of his car. By separate order, the court will order service  
10 of the complaint on the defendants pertaining to plaintiff's Fourth Amendment unreasonable  
11 seizure claim.

12 For the reasons set forth above, the second amended complaint does not state a claim  
13 under the Fourteenth Amendment. Because plaintiff has twice been granted leave to amend and  
14 has not stated a cognizable claim under the Fourteenth Amendment, it appears further leave to  
15 amend would be futile. See California Architectural Bldg. Prod. v. Franciscan Ceramics, 818 F.2d  
16 1466, 1472 (9th Cir. 1988) ("Valid reasons for denying leave to amend include undue delay, bad  
17 faith, prejudice, and futility."); see also Klamath-Lake Pharm. Ass'n v. Klamath Med. Serv.  
18 Bureau, 701 F.2d 1276, 1293 (9th Cir. 1983) (holding that while leave to amend shall be freely  
19 given, the court does not have to allow futile amendments). Thus, this case should proceed only  
20 on plaintiff's claim alleging a violation of his Fourth Amendment rights.

21 In accordance with the above, IT IS RECOMMENDED that plaintiff's claims alleging  
22 violations under the Fourteenth Amendment and plaintiff's claims against defendant Van be  
23 dismissed without further leave to amend.

24 These findings and recommendations are submitted to the United States District Judge  
25 assigned to the case pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within 14 days after  
26 being served with these findings and recommendations, plaintiff may file written objections with  
27 the court. Such a document should be captioned "Objections to Magistrate Judge's Findings and  
28 Recommendations." Plaintiff is advised that failure to file objections within the specified time

1 may waive the right to appeal the District Court's order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir.  
2 1991).

3 Dated: February 13, 2024

*Carolyn K. Delaney*

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5 CAROLYN K. DELANEY  
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7 UNITED STATES MAGISTRATE JUDGE  
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